

Good Afternoon, Everyone!

With the autumnal equinox behind us and the winter solstice ahead, we find ourselves in that bustling season where our year is ending in various ways, and the more patriotic holidays are giving way to the more parochial. So, in the back-to-school spirit, here's a pop quiz for management:

Which religious holidays require accommodation?

Is it just the ones that are also federal or state public holidays, like Christmas? Or ones that are observed by most practicing members of an established religion, such as Ramadan or Rosh Hashanah? What about less popular feasts such as Samhain, the Wiccan High Holy Day that falls on Hallowe'en?

All of the above? None of the above? The answer is: it depends (you didn't really think you would get a straight answer from a lawyer, did you?). To clarify, it is not the holiday itself that must be accommodated, but rather the sincerely held beliefs of the individual requesting time off or away from duty.

An employee can claim religious discrimination if he or she can show:

- \* The employee has a bona fide religious belief, the practice of which conflicts with an employment duty.
- \* The agency was informed of this belief and of the conflict.
- \* The agency enforced the job requirement against the employee in spite of the conflict.

Once this is established, the employer would have to reasonably accommodate the employee or demonstrate that accommodation would have posed an undue hardship on operations.

It is important to note that the employee must first put the employer on notice of the potential conflict between his or her assigned duties and the religious observance. For example, the employee must inform the employer that she sincerely believes she must be home by sundown on a particular day or absent from her workstation at certain intervals to heed a call to prayer, and why. Then it's up to management to make reasonable, good faith efforts to accommodate the employee's sincerely held beliefs.

Here is the rule of law:

To the extent that modifications in work schedules do not interfere with the efficient accomplishment of an agency's mission, an employee whose personal religious beliefs require that he or she abstain from work at certain times of the workday or workweek must be permitted to work alternative work hours so that the employee can meet the religious obligation.

The Equal Employment Opportunity Commission (EEOC) has established that the term "personal religious beliefs" should be construed broadly to include sincerely

held moral and ethical convictions. In addition, religious accommodation may not be conditioned upon membership in an established religion, or upon the employer's understanding of the dictates of a particular religion.

As far as the EEOC is concerned, necessity is in the eye of the religious observer.

Notably, the EEOC has found that it is not an act of discrimination against other employees of a different religion to ask them to cover any extra shifts that result from such an accommodation, as long as all the non-requesting employees are affected equally.

The Office of Personnel Management (OPM) has provided the following practical guidelines for approving adjusted work schedules for religious observances:

- Agencies should require employees to submit a written request for an adjusted work schedule in advance.
- An employee should specifically state that his or her request for an adjusted work schedule is for religious purposes and should provide acceptable documentation of the need to abstain from work.
- When deciding whether an employee's request for an adjusted work schedule should be approved, a supervisor should not make any judgment about the employee's religious beliefs or his or her affiliation with a religious organization.
- A supervisor may disapprove an employee's request if modifications of an employee's work schedule would interfere with the efficient accomplishment of the agency's mission.
- An employee's request for time off should not be granted without simultaneously scheduling the hours during which the employee will work to make up the time. This provides a clear record of the employee's adjusted work schedule.
- An employee should be allowed to accumulate only the number of hours of work needed to make up for previous or anticipated absences from work for religious observances.
- If an employee's request is approved, a supervisor may determine whether the alternative work hours will be scheduled before or after the religious observance.
- If an employee is absent when he or she is scheduled to perform work to make up for a planned absence for a religious observance, the employee must take paid leave, request leave without pay, or be charged absent without leave, if appropriate. (These are the same options that apply to any other absence from an employee's basic work schedule.)
- The hours worked in lieu of the normal work schedule do not create

any entitlement to premium pay (including overtime pay).

Notably, the guidelines permit the employee to reschedule work hours to make up for "previous or anticipated" absences. This means that, contrary to chronological logic, an employee can actually use compensatory time that has not yet been accrued for this limited purpose.

Of course, the employee may elect to use accrued annual leave or other paid time off, such as earned compensatory time off, earned compensatory time off for travel, or earned credit hours for this purpose, but, based on the above, cannot be required to do so.

For employees who are not on an hourly schedule, certain alternatives may be made available on a temporary or permanent basis, within rules established by the agency. These might include an Alternative Work Schedule (AWS) instead of a traditional fixed work schedule (e.g., 8 hours per day, 40 hours per week), a Compressed Work Schedules (CWS) (a fixed work schedule that enables full-time employees to complete the basic 80-hour biweekly work requirement in less than 10 workdays), or a Flexible Work Schedules (FWS) (consisting of workdays with core hours and flexible hours).

Should you have any questions or need guidance on these issues we encourage you to contact your servicing CPAC MER or the labor counselors in this office.

Whatever your beliefs, I wish you the best during this final season of the year.